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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic report

LUXEMBOURG*

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INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1

1. The Constitution of Luxembourg has recently been amended, although the amendments have not affected the political system of the Grand Duchy (see consolidated version of the Constitution annexed hereto).

Article 2

2. In order to underscore the importance attached to the principle of equality and non-discrimination, a number of recent laws contain specific provisions whose purpose is to reiterate the prohibition against any departure from the principle of equality. This is the case, in particular, of the Act of 19 July 1997 supplementing the Penal Code, which amends the definition of the offence of racism and defines revisionism and other activities based on unlawful discrimination as an offence. Further details of this Act will be given in relation to article 26 of the Covenant. Attention is also drawn to the Act of 18 August 1995 concerning legal assistance, which will be explained more fully in relation to article 14 of the Covenant.

3. Also worthy of mention are the amendments made to the Constitution of Luxembourg in 1994, 1996, 1999 and 2000 with the intention of enhancing civic rights, and the signing of Protocol No. 11 of 11 May 1994, adopted by the Act of 5 July 1996, which amends Protocols Nos. 4, 6 and 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

4. With regard to article 2, paragraph 3 (a), the constitutional amendment of 12 July 1996 established a separate type of court to deal exclusively with administrative proceedings (Constitution, art. 95 bis), in the form of the Administrative Tribunal and the Administrative Court. The organization of the administrative courts was laid down in the Act of 7 November 1996. The Administrative Tribunal consists of two divisions and rules on appeals against individual administrative decisions or against administrative acts of a regulatory nature. The Administrative Court rules on appeals lodged against the decisions of the Administrative Tribunal.

5. Consequently, the Council of State has a purely advisory role, by virtue of the constitutional principle of the separation of powers. However, in parallel with this reform, the Council of State's authority as an advisory body has been significantly strengthened. Under article 83 bis of the Constitution, it has explicitly been given the task of ensuring, a priori, that bills and draft regulations comply with higher legal norms (the Constitution, international conventions and treaties and general legal principles).

6. A posteriori monitoring of the constitutionality of laws is the task of the Constitutional Court. The establishment of this Court is provided for in article 95 ter of the Constitution. The Constitutional Court thus decides on the compliance of laws, except for those dealing with the

adoption of treaties, with the Constitution. This means that administrative and judicial courts may seek the Court's ruling on the compliance of a law and they must comply with the Court's decision.

7. With regard to paragraph 3 (b) of this article, reference is made to the Act of 8 August 2000 concerning international judicial cooperation in criminal matters. The texts drawn up on this subject and on the subject of extradition reflect States' willingness to cooperate closely in order to combat organized crime effectively. International judicial cooperation in criminal matters is itself a genuine act of judicial cooperation at the international level, in that it supports the work of foreign judges in the administration of justice in their own jurisdictions. The drafters of the Act of 8 August 2000 wished to regulate requests for international judicial assistance from judicial authorities in requesting States with no international agreement with Luxembourg on judicial cooperation and, to a lesser extent, those from judicial authorities in States that did have such an agreement with Luxembourg, stipulating, in particular, the contents and form of the requests and grounds for rejecting them, as well as possible appeal procedures. The Act is intended, on the one hand, to protect those interests that should be protected and, on the other, to simplify and speed up procedures.

Article 3

8. The Act of 26 May 2000 concerning protection against sexual harassment in the workplace is intended to stamp out any behaviour that has sexual connotations and that affects the dignity of a person at work, whether the behaviour is physical, verbal or non-verbal. Sexual harassment is considered to be contrary to the principle of equal access by men and women to employment, professional training and promotion and equal working conditions.

9. Moreover, in order to make it easier to prove that gender-based discrimination has taken place, the Act of 26 June 2001 shifted the burden of proof in this area. Thus, there is a prima facie presumption that direct or indirect gender-based discrimination has taken place, which reverses the burden of proof so that it is for the defendant to prove that there has been no violation of the principle of equal treatment.

Article 6

10. The right referred to in paragraph 1 of this article is taken up in article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

11. With regard to paragraph 2, attention is drawn to article 2 of Protocol No. 6 as amended by Protocol No. 11 to the above-mentioned Convention. In addition, a constitutional amendment dated 29 April 1999 has confirmed the abolition of the death penalty, while article 18 of the Constitution stipulates that the death penalty may not be reintroduced.

12. With regard to article 6, paragraph 3, mention should be made of the Act of 19 July 1997, which inserted a special chapter in Luxembourg's Penal Code, entitled "Racism, revisionism and other forms of discrimination". Stiffer punishments have been introduced for the crime of genocide, whether the offence is committed in speech, writing or any other means of communication.

Article 7

13. The Act of 24 April 2000 was designed to bring Luxembourg's legislation into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Following the visits to Luxembourg by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its reports to the Government of Luxembourg dated 11 November 1993 and 27 June 1997, the legislature sought to implement a number of its recommendations. Before the introduction of the Act of 24 April 2000, only acts of torture committed by private individuals against other individuals were punishable in Luxembourg. This provision made it impossible to punish with sufficient severity State officials who, in the course of their duties, deliberately committed acts of torture. Consequently, the new law introduced articles 216-1 to 260-4 into the Penal Code. It should be pointed out that it is not only physical torture that is addressed, but also mental torture. Furthermore, a number of articles in the Code of Criminal Procedure have been modified so that the person being held has the right to ask for a medical examination and to be assisted by counsel. Accused persons also have the right to notify a person of their choice of their detention.

14. The authorities have taken a number of initiatives to improve the situation of drug-users. Under the Act of 27 April 2000 amending the Act of 19 February 1973 concerning the sale of medicinal substances and efforts to combat drug addiction, a programme has been set up to treat addicts with substitute drugs. Addicts are treated and monitored from a psychological and social point of view in specially-equipped premises authorized by the Ministry of Health.

15. The State Prosecutor may also propose to those who break the drug laws that they should volunteer to undergo detoxification treatment in exchange for a lighter sentence.

16. Within this context, reference should be made to the Act of 27 July 1997 concerning the organization of the prison service. A special medical unit has been set up in Luxembourg Prison to deal with drug-addicted and mentally-disturbed detainees or individuals subject to a placement order.

Article 9

17. Reference should be made to the Act of 6 May 1999, which introduced the concept of criminal mediation into the Code of Criminal Procedure. Under the Act, the State Prosecutor is authorized to make use of mediation if to do so appears likely to ensure reparation for the damage caused to the victim, end the distress resulting from the offence or help in the rehabilitation of the offender.

18. Since the adoption of the Act of 5 July 1996, it has been open to all persons found guilty of a crime or offence in a final decision at first or last instance to apply for a review of their case if the European Court of Human Rights finds that the criminal sentence was handed down in violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

19. With regard to the measures taken against juvenile offenders, there is of course a special system for them, both in terms of the investigation into the case and their detention. On 10 August 1992, Luxembourg enacted a new law on the protection of young people. This law reiterates the principle that a minor who is under 18 years of age when the incidents that constitute a criminal offence take place is not brought before a criminal court but before a youth court. The latter takes custodial, educational and protective measures with regard to the minor appearing before it. Thus, it may reprimand minors, prescribe a system of educational assistance for them or place them in a State rehabilitation centre or with any other appropriate person. Moreover, the youth court may, without removing the minors from their usual home, require them to attend an ordinary or special school, perform some service of educative value or follow a regime determined by the teaching or medical staff in an educational guidance centre. Moreover, since the adoption of the new law, minors themselves are able to apply for the placement ordered by the judge to be extended, including beyond the age of majority though not over the age of 21, or to be placed outside their home if they feel they need help. In this case, their parents still retain visiting and correspondence rights unless the judge decides otherwise.

Article 10

20. With regard to paragraph 1 of this article, reference should be made to the Act of 28 March 1972 as amended by the Act of 24 April 2000, which, in its article 15, stipulates that when a foreigner cannot be deported or returned because of de facto circumstances, they may be placed in an appropriate establishment provided for that purpose. However, the foreigner will receive written notification, in a language they understand, of the decision to detain them. For the purpose of their defence, they have the right to the assistance of an interpreter free of charge. They may also speak to their family by telephone, be examined by a doctor and choose a lawyer.

21. In addition, they may file an appeal with the Administrative Tribunal against the decision to detain them and an appeal against the Tribunal's decision with the Administrative Court.

22. It should be noted that one of the duties of the Advisory Commission to the Aliens Department is to issue an opinion on cases where a foreigner is to be deported. This opinion is issued on an obligatory basis if the foreigner holds a valid identity card or at the foreigner's request if the deportation decision was taken before an identity card was issued. Cases are referred by the Minister of Justice to the Commission, which consists of a judge, a lawyer and a member nominated by the National Council on Foreigners. The person concerned is invited to appear before the Commission and has the right to the assistance of a lawyer and an interpreter.

23. In Luxembourg, minors are held in special institutions to separate them from adult prisoners and to cater for their particular needs. In exceptional cases, and only where it is absolutely necessary, minors may be held temporarily in a short-term prison for up to a month during the proceedings in the youth court. They are kept away from adult prisoners and are subject to a special regime. In any case, the youth court or the youth appeals division can be requested to lift such a custodial measure.

24. If placement in an ordinary custodial, educational or protective institution is inadequate, the court may order that the minor should be held in a State prison. However, in this case, minors are subject to a special regime that puts considerable emphasis on education and protects them from other prisoners.

25. In the interests of their education and in order to facilitate their entry into the labour market and their social rehabilitation, minors placed in institutions may be granted leave by the youth judge. Leave can be granted by the directors of the institutions, provided that they notify the youth judge in advance. The probation officers providing help, advice and assistance to the institutionalized minor can report at any time to the youth judge on the minor's mental and physical state and propose measures that they believe would be for the minor's benefit.

Article 12

26. The rights established in article 12 of the Covenant are also contained in articles 2 and 3 of Protocol No. 4, as amended by Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 11 May 1994, and adopted by the Act of 5 July 1996.

27. The Act of 27 March 2000 established a temporary special protection regime allowing entry to the territory with no associated application for asylum. This regime was established at the time of the armed conflict in Kosovo in order to enable Kosovo Albanians to seek protection in Luxembourg. The new temporary protection regime covers anyone arriving as part of a mass migration, however, and therefore also provides more general regulation of mass inflows of asylum-seekers fleeing areas of armed conflict.

28. The effect of this Act was to suspend all ongoing processing of asylum applications. The temporary protection regime will be in place for a maximum of three years and, when it expires, applications for refugee status may be submitted or resubmitted within one month. Applications may also be made for family reunification in respect of a spouse or minor children. Those covered by the temporary protection regime also receive social assistance or authorization for temporary employment.

29. As well as establishing the temporary protection regime, the Act of 27 March 2000 amended the Act of 3 April 1996 (amended) establishing a procedure for consideration of asylum applications.

30. By adapting the procedure for consideration of asylum applications, this Act aims to find durable solutions to asylum-seekers' situation within a humane and reasonable time frame, while strictly observing the Geneva Convention and the general principles of law that apply to Luxembourg. The asylum procedure has been revised to make it faster and more efficient.

31. For example, the Minister of Justice is responsible for registration and processing of asylum applications. He may request an opinion on individual cases from the Consultative Commission on Refugees. In addition to issuing such opinions, the Consultative Commission is also required to advise the Government on any draft legislation or regulations relating to asylum. It may also submit proposals for the improvement of asylum-seekers' situation. All asylum-seekers must be interviewed by an official of the Ministry of Justice and informed of

their right to receive the services of an interpreter or lawyer free of charge. The Ministry of Justice will then take a reasoned decision on the asylum application and notify the applicant in writing. In order to safeguard the right of appeal to a higher authority, a remedy of annulment or review is available through the Administrative Tribunal. A further appeal may be made to the Administrative Court.

Article 13

32. The right provided under article 13 of the Covenant is contained in article 1 of Protocol No. 7, as amended by Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 11 May 1994, and adopted by the Act of 5 July 1996.

33. In addition, the Act of 28 March 1972, as amended by the Act of 8 April 1993, provides in article 14 that a foreigner may not be expelled or deported to another country if he can establish that his life or freedom would thereby be seriously endangered, or that he would be treated in a manner contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 14

34. The rights provided under article 14 of the Covenant are contained in articles 2, 3 and 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 of 11 May 1994.

35. With regard to paragraph 1 of this article, mention should be made of the Act of 11 August 1996, which introduced the pre-trial review procedure into the Code of Criminal Procedure. The effect of this law was to make it possible to investigate civil and commercial cases more thoroughly. By establishing time links for the parties in the proceedings, the pre-trial judge is able to order prompt additional investigations if necessary, thereby making the proceedings more efficient and expeditious, which in turn reinforces litigants' rights.

36. Nowadays, unfortunately, judicial proceedings are in many cases the only way of asserting one's rights. Some people, however, may find themselves unable to pursue their rights in the courts because they are disadvantaged from the start as a result of their social, cultural or economic status. Since well before the Legal Aid Act of 18 August 1995, it has been the practice in Luxembourg to provide legal aid not only to Luxembourg nationals but also to any resident foreigner. This de facto situation was formalized in the Act of 18 August 1995, and any person fulfilling the requirements for legal aid will automatically be assigned a lawyer or other Ministry official if the case so requires.

37. Legal aid may also be provided in proceedings relating to asylum, access to the territory, residence, settlement and exit by foreigners. It is granted in judicial or extra-judicial cases, in non-contentious or contentious cases, and to the plaintiff or the defence. It may be requested during the proceedings for which it is required and even for protective acts or enforcement

proceedings in respect of judicial decisions or any other enforceable instrument. In criminal cases, it naturally does not cover either any costs or fines to which a guilty party may be sentenced.

38. Also under the Legal Aid Act, a reception and legal information service has been set up in the Government Procurator-General's Department, which is responsible for providing private individuals, regardless of nationality, with general information on the extent of their rights and on ways and means of safeguarding them. To date, three reception and legal information services have been established - in Luxembourg City (Centre), Esch-sur-Alzette (South) and Diekirch (North) - covering the whole territory of the Grand Duchy.

39. With regard to paragraph 4 of article 14, reference is made to article 10 of the Covenant for the procedure applicable to minors.

Article 20

40. The prohibition of incitement to discrimination under Luxembourg law will be dealt with in connection with article 26 of the Covenant.

Article 22

41. Article 26 of the Act of 21 April 1928 on non-profit-making associations and State-approved institutions contained a specific rule on non-profit-making associations providing that, where three fifths of the members were not of Luxembourg nationality, an association would not be able to claim corporate status vis-à-vis third parties unless the Government granted an exemption with the approval of the Council of State. The Act of 4 March 1994 repealed this provision, which had come to be regarded as discriminatory. There are therefore no longer any restrictions on the exercise by foreigners of any nationality of their fundamental rights to freedom of association and to express their opinions under existing laws.

Article 23

42. With regard to paragraph 4 of article 23, reference should be made to the Act of 27 July 1997, which inserted article 388-1 into the Civil Code and provides that children who are capable of forming their own views may be given a hearing in all procedures concerning them. They may also request such a hearing, a request the court may not deny except by a reasoned decision. Minors may be heard alone or accompanied by a lawyer or a person of their choice. The hearing shall take place in chambers.

Article 24

43. With regard to paragraph 3 of this article, reference should be made to the Act of 24 July 2001 amending the Luxembourg Nationality Act of 22 February 1968. The purpose of this Act is to harmonize as far as possible the submission of applications for Luxembourg nationality by naturalization or choice. For acquisition of Luxembourg nationality by naturalization, for example, the Act reduces the requirement for effective regular residence on

Luxembourg territory to five years. It also abolishes the age limit for voluntary declarations by those wishing to choose Luxembourg nationality. Applications are no longer subject to a right to registration. This reform will benefit the children of such new Luxembourg citizens.

Article 25

44. The Luxembourg Government Commissariat for Foreigners is part of the Ministry of the Family. Its task is to provide support and organize actions to facilitate the process of integrating foreigners wishing to settle in Luxembourg. It deals with accommodation and lodging for foreigners, for example, and assists in establishing and running reception centres. It may propose to the Government any measure that might provide foreigners with practical help in solving their special problems and adapting to social, economic and cultural life in Luxembourg society. At the international level, it also cooperates with international bodies.

45. The National Council on Foreigners was established in 1995 in order to facilitate integration of foreigners. It gives opinions on all legislative and regulatory issues relating to policy on foreigners. The Council has established three special standing committees:

- A special standing committee on issues relating to cross-border workers;
- A special standing committee on issues relating to local consultative commissions for foreigners;
- A special standing committee against racial discrimination. This committee was established in 1996 and its task is to prepare opinions and proposals for action against all forms of racial discrimination. Among other things, it devises projects and programmes, particularly in the areas of education, cultural and social activities and the training of public officials, which aim to enhance mutual understanding among the various communities living in Luxembourg.

46. The new right of foreign European Union nationals to vote in municipal elections was discussed at a national conference of foreigners organized by the Government Commissariat for Foreigners. The right of non-Luxembourg European Union nationals resident in Luxembourg to vote in municipal elections was acquired in principle with the signature of the Maastricht Treaty. Arrangements for participation by foreign European Union nationals in municipal elections were established by the Act of 28 December 1995. The right of citizens of the Union to vote in Luxembourg's municipal elections is linked to a length of residence equal to one term of office of the Municipal Council, i.e. six years. The right to stand as candidate is linked to a length of residence of two terms, i.e. 12 years.

47. Moves to establish the right of foreign European Union nationals to vote in European elections in Luxembourg began in 1994. To qualify as voters, non-Luxembourg nationals residing in Luxembourg must have been domiciled there for at least five of the preceding six years, and, to qualify to stand for election, for at least 10 of the preceding 12 years.

48. In order to enable foreigners to exercise their full rights on an equal footing with Luxemburgers, a range of measures were taken to help them prepare for the elections. For example:

- The requirements to be met for registration on the electoral rolls were published in the newspapers;
- Every person concerned received an information leaflet in various languages;
- Poster campaigns were launched to encourage registration on the electoral rolls.

49. Luxembourg's trade associations also operate on an electoral basis. Given that they play an important initiatory and consultative role in their areas of concern, Luxembourg has granted voting rights to all members of such associations (with the exception of the Guild Chamber, the Chamber of Commerce and the Civil Servants' Association), regardless of nationality or residence status.

50. Until the Act of 8 June 1994, there was a nationality requirement for access to a public service post both in sectors involving the exercise of sovereignty (ministries, judiciary, police and armed forces) and in sectors such as research, education, public transport, postal services and telecommunications, and water, electricity and gas services. Since the Act of 8 June 1994, sectors not involving the exercise of sovereignty have been open to non-Luxembourg nationals from European Union member States.

Article 26

51. By the Act of 5 July 1996, Luxembourg ratified Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which established a permanent European Court of Human Rights. The Court is required to rule on all questions concerning the interpretation and application of the Convention and its protocols.

52. Luxembourg's Advisory Commission on Human Rights was established by government regulation on 26 May 2000. It is primarily a government consultative body and considers issues put to it by the Government in the area of human rights in Luxembourg. The Commission may make proposals to the Government concerning measures or programmes of action to encourage the protection and promotion of human rights. The Commission also acts as national correspondent for the European Monitoring Centre for Racism and Xenophobia.

53. When the European Commission proclaimed 1997 "European Year Against Racism", Luxembourg undertook to improve its legislation on discrimination. Given that all racist acts are incompatible with democratic principles, Luxembourg's legislature decided to send a clear message to potential perpetrators of such offences by criminalizing all racist and revisionist behaviours. It also grouped racial discrimination together with all other forms of discrimination, to ensure that they would be given equal treatment.

54. The Act of 19 July 1997 therefore supplemented the Criminal Code by amending the offence of racism and criminalizing revisionist and other acts based on illegal discrimination.

55. The legislature defines discrimination in article 454 of the Criminal Code and lists the grounds (origin, sex, skin colour, disability, political opinion, membership of an ethnic group, among others). Such acts are defined as offences whether committed against physical persons or corporate bodies.

56. The law also provides for particularly harsh sentences where unlawful discrimination is practised by a Government authority or a person entrusted with public service duties in the exercise of their functions.

57. The new law also punishes all forms of incitement to racial hatred or violence, whether in speech or in writing.

58. One important point is that the public prosecutor will take proceedings against any act of discrimination on any of the grounds mentioned in article 454 of the Criminal Code. In addition to official proceedings by the public prosecutor or following a complaint by a victim, associations with corporate status and approved by the Ministry of Justice may bring a civil action in cases where the offence constitutes racial discrimination and is prejudicial to the collective interests defended by those associations.